



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Y-D-J-

DATE: NOV. 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a communications and media executive, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established he qualified for classification as an individual of exceptional ability.

On appeal, the Petitioner submits additional evidence and contends that he meets the regulatory criteria for classification as an individual of exceptional ability. In addition, he asserts that he is eligible for a national interest waiver.

Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurship, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Petitioner seeks to continue working as an executive in the internet protocol streaming media industry. He asserts that he meets at least three of the exceptional ability evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Director determined that the Petitioner's certificate from the ██████████ Executive Development Program satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." In addition, the Director found that the Petitioner's ██████████ membership constituted "[e]vidence of membership in professional associations" and therefore he satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). The record supports the Director's findings relating to these two criteria.

On appeal, the Petitioner maintains that he also meets the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) which requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." For the reasons discussed below, the record supports a finding that the Petitioner satisfies this third criterion.

As evidence of his ten years of full-time experience as a communications and media executive, the Petitioner presented a January 2018 employment verification letter from ██████████.³ This letter provides a detailed description of his work experience at ██████████ including his employment dates and the executive leadership duties he performed. For example, from May 2003 until February 2006, the Petitioner served as "TV Portal Team Leader" for the company's television service "directing, supervising and managing approximately 50 or more team staff." The Petitioner's work involved strategic planning and forming partnership agreements with Samsung and

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The letter explains that in 2014 ██████████ merged with ██████████ "becoming one entity with the name of ██████████."

LG to launch Smart TV and Digital TV Portal services. In addition, as [REDACTED] (a subsidiary of [REDACTED] team leader from March 2006 until November 2007, the Petitioner oversaw the launch of this subsidiary's business content for video on demand, audio on demand, and game markets. He also was responsible for organizing the [REDACTED] Internet Protocol Television (IPTV) Consortium with 13 participating companies and "serving as the general director of the IPTV demonstration business project."

Furthermore, the Petitioner served as Convergence Business Team Leader tasked with integrating [REDACTED] IPTV and mobile services from November 2007 until March 2014. In this role, he served as "the general director for the Smart TV businesses/services which [REDACTED] and [REDACTED] had launched jointly." Additionally, he "was responsible for the entire strategic planning for [REDACTED]. Finally, from April 2011 until May 2015, the Petitioner concurrently served as Chief Executive Officer (CEO) of [REDACTED] and Convergence Business Team Leader. As [REDACTED] CEO, he "directed planning and designing of the entire service platform for [REDACTED].

The Director found that the Petitioner had not met the requirements of the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), stating:

While the [Petitioner] may have 10 (ten) years of experience with the telecommunications and media *field*, the evidence must establish [he] has at least 10 (ten) years of experience in the *occupation* . . . sought. The evidence fails to show that the [Petitioner] has at least 10 (ten) years [of] experience as a Communications and Media Executive or as an Executive in a similarly held profession.

In his appeal brief, the Petitioner contends that the employment verification letter from [REDACTED] shows that he has been engaged in an executive capacity at [REDACTED] for more than ten years. Based on the job duties and responsibilities discussed in the aforementioned letter, we agree with the Petitioner that his evidence is sufficient to document that he has at least ten years of full-time experience as a communications and media executive. Accordingly, he meets the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), and the Director's finding on this issue is withdrawn. The record adequately demonstrates that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification.

However, with respect to the Petitioner's eligibility for a national interest waiver, the Director's decision did not analyze whether he meets the requisite three prongs set forth in the *Dhanasar* analytical framework.

III. CONCLUSION

We are therefore remanding the petition for the Director to apply the *Dhanasar* analytical framework to make a determination as to whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of Y-D-J-*, ID# 1726453 (AAO Nov. 5, 2018)